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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/496,111	02/01/2000	Brian L. Allen	BUR990217US1	5743
29154	7590	03/31/2004		
FREDERICK W. GIBB, III MCGINN & GIBB, PLLC 2568-A RIVA ROAD SUITE 304 ANNAPOLIS, MD 21401			EXAMINER KUMAR, PANKAJ	
			ART UNIT	PAPER NUMBER
			2631	18

DATE MAILED: 03/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/496,111

Applicant(s)

ALLEN, BRIAN L.

Examiner

Pankaj Kumar

Art Unit

2631

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 17 March 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-4, 6-11, 13-17, 19-20

Claim(s) withdrawn from consideration: _____

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

TEMESGHEN GHEBREYESAE
PRIMARY EXAMINER

Art Unit: 2631

Applicant argues in the bottom of page six to the top of page 7 that the even and odd in McNeely are even and odd taps. Then the applicant says in the first full paragraph of page 7 that the even and odd in McNeely is not really even and odd samples since McNeely is alternately drawing data from the alternate subfilters. So applicant seems to be arguing that alternately drawing data does not result in even and odd data. This is not persuasive. For example, suppose data samples 1 to 10 exist. By alternately drawing from this data sample for each of the subfilters, the result will be that one subfilter will receive odd data samples of 1, 3, 5, 7, 9 and the other sub filter will receive even data samples of 2, 4, 6, 8, 10.

Applicant begins to argue on the third paragraph on page 6 about separate summation units not being disclosed and then concludes in the same paragraph with filter inputting and processing odd and even inputs being disclosed while in the middle of the paragraph, applicant discusses vestigial sideband. It is not clear to the office what applicant is arguing. If applicant is saying that separate summation units are not taught by the reference, then the office has already admitted that but has also said that since a summation unit is taught, it is obvious to separate that summation unit. Applicant does not argue against this reasoning.

Applicant argues in the bottom of page 7 and first full paragraph of page 8 that the outputs are complex outputs rather than even and odd outputs. This is not persuasive since outputs from such as the even symmetric filter in figure 19 of McNeely are the even outputs and the outputs from such as the odd symmetric filter also in figure 19 of McNeely are the odd outputs.

Applicant argues also on page 8 and the second paragraph in page 9 that the combination of cited references does not result in processing at twice the rate. This is not persuasive since applicant has not claimed processing at twice the rate. Also, since McNeely is alternately drawing data from the alternate subfilters (col. 4 last paragraph, text surrounding toggle), this process is interleaving data.

Applicant argues in the second paragraph in page 9 of other benefits to its invention. These are not persuasive since those benefits have not been claimed.

Applicant argues with references individually on the bottom of page 8 and top of page 9. This is not persuasive since as explained in the prior action, the rejection was based on a combination of references.

In response to applicant's argument on the bottom of page 7 that McNeely is structurally unrelated to Eastty, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).